IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

WP(C).No. 22061 of 2007(B)

OS.652/2007 of ADDL.M.C.,IRINJALAKUDA
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PETITIONER:

ASOKAN, AGED 56, S/O.RAMAN,
THRIKKUR VILLAGE DESOM, MUKUNDAPURAM TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:
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1. KRISHNAN, S/O.PAPPU,
ATHIPARAMBU HOUSE, THRIKKUR VILLAGE DESOM,
MUKUNDAPURAM TALUK.

2. MICHEAL, S/O XAVIER, MELEDATH HOUSE,
THRIKKUR VILLAGE DESOM, MUKUNDAPURAM TALUK.

3. ASHA, W/O MICHEAL,
MELEDATH HOUSE, THRIKKKUR VILLAGE DESOM,
MUKUNDAPURAM TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 22061 OF 2007

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Dated this the 18th day of July, 2007.

J U D G M E N T

This writ petition is filed challenging the refusal to implead the writ petitioner as an additional defendant in the suit. The suit is one for permanent injunction whereby the plaintiff in the suit contended that by indiscriminate removal of soil from the defendant's property the lateral support to the plaintiff's property is lost and therefore he be restrained by doing so, so as not to detrimentally affect the right of the plaintiff.

2. Now, the present writ petitioner wanted to contend for the position that the removal of the soil is without any proper authority or licence and if it is permitted it will affect the interest of large body of person and he be impleaded as a party to the suit. It is a well settled principle that the plaintiff is the master of his suit. It is for the plaintiff to decide against whom he must claim relief. Attention of the Court is drawn to point out that by

indiscriminate removal of earth the lateral support to his property will be lost and therefore the question to be adjudicated by the Sub Court is whether by removal of earth as contended by the plaintiff, the lateral support to his property will be lost or not. In that process the Court cannot go into the other question regarding the validity or invalidity or right of the defendant in removing the soil. If a person is aggrieved stating that it requires permission the law does not prevent him from making approach to the appropriate authorities under law. Even if the Geologist's permission is not there, he could bring it into the notice of Geologist that damage may be caused to the society at large and there are appropriate laws and rules governing the same. For the said purpose, he cannot be impleaded as a party in the suit to adjudicate the matter which does not come within the realm of the civil Court in that particular suit. Therefore, I find the non-impleadment by the learned Munsiff is only proper and it does not call for any interference. But at the same time I make it very clear that if the writ petitioner has got any

statutory right or civil right he may approach the appropriate authority in accordance with law for redressal of his grievance.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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